IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.403 OF 2006

Chetan Jhunjhunuwala ..Petitioner.

Vs.

M/s. Sapphire Kichenware Pvt. Ltd. ..Respondent.

....

Mr. D.R. Shah for the Petitioner.

Mr. N.S. Rodrigues i/b Ashwin Kumar & Co. for the Respondent.

....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

4th April, 2007.

P.C. :

The claim in the Company Petition is for goods sold, supplied and delivered. The claim is clearly disputed and it cannot be said that there is presently a debt due and payable. The statutory notice was duly replied on 20th October, 2005. The defence therein is that (i) the Petitioner has accepted goods of a value of Rs.1,23,875/- back till 20th January, 2005; (ii) that the Petitioner has overcharged to the extent of Rs.4,25,458 and (iii) the Petitioner had in fact received an advance of Rs.1 lac against another order and had confirmed the debit balance pending at the foot of an account in

the ledger book maintained by the Respondent. The confirmation in the ledger is annexed at Exh. 3 to the affidavit in reply filed by the Respondent but is disputed by the Petitioner.

These disputed questions of fact cannot be resolved in a Company Petition for winding up. The Petition will accordingly have to be dismissed leaving it open to the Petitioner to seek recourse to the remedy of instituting a civil suit. The Petition is accordingly dismissed.